

CHAPTER 58. LAWS REGULATING THE CONDUCT OF OFFICERS AND EMPLOYEES OF THE STATE

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Annotations

Revision of subchapter. - 67 Del. Laws, c. 417, effective Jan. 23, 1991, repealed and reenacted this subchapter, substituting present §§ 5801 to 5810A for former §§ 5801 to 5808, concerning the Code of Ethics and Conflicts of Interest. No detailed explanation of the changes made by the 1990 Act has been attempted, but where appropriate, historical citations to the former sections have been added to corresponding sections in the revised subchapter.

Section 1 of 69 Del. Laws, c. 467: "This act shall be referred to as the 'Public Integrity Act of 1994.' "

Subchapter I. State Employees', Officers' and Officials' Code of Conduct

§ 5801. Short title.

This subchapter shall be known and may be cited as the "State Employees', Officers' and Officials' Code of Conduct."

(67 Del. Laws, c. 417, § 1.)

§ 5802. Legislative findings and statement of policy.

The General Assembly finds and declares:

(1) In our democratic form of government, the conduct of officers and employees of the State must hold the respect and confidence of the people. They must, therefore, avoid conduct which is in violation of their public trust or which creates a justifiable impression among the public that such trust is being violated.

(2) To ensure propriety and to preserve public confidence, officers and employees of the State must have the benefit of specific standards to guide their conduct and of some disciplinary mechanisms to guarantee uniform maintenance of those standards. Some standards of this type are so vital to government that violation thereof should subject the violator to criminal penalties.

(3) In our democratic form of government, it is both necessary and desirable that all citizens should be encouraged to assume public office and employment, and that, therefore, the activities of officers and employees of the State should not be unduly circumscribed.

(4) It is the desire of the General Assembly that all counties, municipalities and towns adopt code of conduct legislation at least as stringent as this act to apply to their employees and elected and appointed officials. Subchapter I, Chapter 58 of Title 29 shall apply to any county, municipality or town and the employees and elected and appointed officials thereof which has not enacted such legislation by January 23, 1993. No code of conduct legislation shall be deemed sufficient to exempt any county, municipality or town from the purview of subchapter I, Chapter 58 of Title 29 unless the code of conduct has been submitted to the State Ethics Commission and determined by a majority vote thereof to be at least as stringent as subchapter I, Chapter 58, Title 29. Any change to an approved code of conduct must similarly be approved by the State Ethics Commission to continue the exemption from subchapter I, Chapter 58, Title 29."

(67 Del. Laws, c. 417, § 1; 68 Del. Laws, c. 433, § 1)

§ 5803. Construction.

This subchapter shall be construed to promote high standards of ethical conduct in state government. (59 Del. Laws, c. 575, § 1; 67 Del. Laws, c. 417, § 1.)

§ 5804. Definitions.

For the purposes of this subchapter:

(1) "Close relative" means a person's parents, spouse, children (natural or adopted) and siblings of the whole and half-blood.

(2) "Commission" means the State Public Integrity Commission established by this chapter.

(3) "Commission Counsel" means the legal counsel appointed by the Commission pursuant to this chapter.

(4) "Compensation" means any money, thing of value or any other economic benefit of any kind or nature whatsoever conferred on or received by any person in return for services rendered or to be rendered by oneself or another.

(5) A person has a "financial interest" in a private enterprise if:

- a. The person has a legal or equitable ownership interest in the enterprise of more than 10% (1% or more in the case of a corporation whose stock is regularly traded on an established securities market);**
- b. The person is associated with the enterprise and received from the enterprise during the last calendar year or might reasonably be expected to receive from the enterprise during the current or the next calendar year income in excess of \$5,000 for services as an employee, officer, director, trustee or independent contractor; or**
- c. The person is a creditor of a private enterprise in an amount equal to 10% or more of the debt of that enterprise (1% or more in the case of a corporation whose securities are regularly traded on an established securities market).**

(6) "Honorary state official" means a person who serves as an appointed member, trustee, director or the like of any state agency and who receives or reasonably expects to receive not more than \$5,000 in compensation for such service in a calendar year (not including any reimbursement for expenses).

(7) "Matter" means any application, petition, request, business dealing or transaction of any sort.

(8) "Person" means an individual, partnership, corporation, trust, joint venture and any other association of individuals or entities.

(9) "Private enterprise" means any activity conducted by any person, whether conducted for profit or not for profit and includes the ownership of real or personal property. Private enterprise does not include any activity of the State or of any political subdivision or of any agency, authority or instrumentality thereof.

(10) "State" means the State of Delaware and includes any state agency.

(11) "State agency" means any office, department, board, commission, committee, court, school district, board of education and all public bodies existing by virtue of an act of the General Assembly or of the Constitution of the State, excepting only political subdivisions of the State, their agencies and other public agencies not specifically included in this definition which exist by virtue of state law, and whose jurisdiction:

a. Is limited to a political subdivision of the State or to a portion thereof; or b. Extends beyond the boundaries of the State.

(12) a. "State employee" means any person:

- 1. Who receives compensation as an employee of a state agency;**
- 2. Who serves as an appointed member, trustee, director or the like of any state agency and who receives or reasonably expects to receive more than \$5,000 in compensation for such service in a calendar year (not including any reimbursement for expenses); or**
- 3. Who is an elected or appointed school board member.**

b. "State employee" does not include:

- 1. Members of the General Assembly;**
- 2. The Chief Justice and Associate Justices of the Supreme Court;**
- 3. The Chancellor and Vice-Chancellors of the Court of Chancery;**
- 4. The President Judge and Associate Judges of Superior Court;**
- 5. The Chief Judge and Associate Judges of Family Court;**
- 6. The Chief Judge and Resident Judges of the Court of Common Pleas;**
- 7. The Chief Magistrate and Justices of the Peace;**
- 8. State officers; or**
- 9. Honorary state officials.**

(13) "State officer" means any person who is required by subchapter II of this chapter

to file a financial disclosure statement but does not include:

- a. Members of the General Assembly;
- b. The Chief Justice and Associate Justices of the Supreme Court;
- c. The Chancellor and Vice-Chancellors of the Court of Chancery;
- d. The President Judge and Associate Judges of Superior Court;
- e. The Chief Judge and Associate Judges of Family Court;
- f. The Chief Judge and Resident Judges of the Court of Common Pleas; or
- g. The Chief Magistrate and Justices of the Peace.

(59 Del. Laws, c. 575, § 1; 61 Del. Laws, c. 132, § 23; 62 Del. Laws, c. 48, § 1; 67 Del. Laws, c. 417, § 1; 69 Del. Laws, c. 467, §§ 2, 3; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 176, §§ 33, 34; 73 Del. Laws, c. 19, § 1.)

Annotations

Revisor's note. - Section 45 of 71 Del. Laws, c. 176, provides: "The enactment of this act into law shall be sufficient to cover the requirements of §§ 42 and 43 of the Fiscal Year 1998 State Budget Act."

Effect of amendments. - 73 Del. Laws, c. 19, added (12) a.3.; and made a minor stylistic and punctuation change.

§ 5805. Prohibitions relating to conflicts of interest.

(a) Restrictions on exercise of official authority.

(1) No state employee, state officer or honorary state official may participate on behalf of the State in the review or disposition of any matter pending before the State in which the state employee, state officer or honorary state official has a personal or private interest, provided, that upon request from any person with official responsibility with respect to the matter, any such person who has such a personal or private interest may nevertheless respond to questions concerning any such matter. A personal or private interest in a matter is an interest which tends to impair a person's independence of judgment in the performance of the person's duties with respect to that matter.

(2) A person has an interest which tends to impair the person's independence of judgment in the performance of the person's duties with respect to any matter when:

- a. Any action or inaction with respect to the matter would result in a financial benefit or detriment to accrue to the person or a close relative to a greater extent than such benefit or detriment would accrue to others who are members of the same class or group of persons; or
- b. The person or a close relative has a financial interest in a private enterprise which enterprise or interest would be affected by any action or inaction on a matter to a lesser or greater extent than like enterprises or other interests in the same enterprise.

(3) In any case where a person has a statutory responsibility with respect to action or nonaction on any matter where the person has a personal or private interest and there is no provision for the delegation of such responsibility to another person, the person may exercise responsibility with respect to such matter, provided, that promptly after becoming aware of such conflict of interest, the person files a written statement with the Commission fully disclosing the personal or private interest and explaining why it is not possible to delegate responsibility for the matter to another person.

(b) Restrictions on representing another's interest before the state.

(1) No state employee, state officer or honorary state official may represent or otherwise assist any private enterprise with respect to any matter before the state agency with which the

employee, officer or official is associated by employment or appointment.

(2) No state officer may represent or otherwise assist any private enterprise with respect to any matter before the State.

(3) This subsection shall not preclude any state employee, state officer or honorary state official from appearing before the State or otherwise assisting any private enterprise with respect to any matter in the exercise of such person's official duties.

(c) Restrictions on contracting with the state.

No state employee, no state officer and no private enterprise in which a state employee or state officer has a legal or equitable ownership of more than 10% (more than 1% in the case of a corporation whose stock is regularly traded on an established securities market) shall enter into any contract with the State (other than an employment contract) unless such contract was made or let after public notice and competitive bidding. Such notice and bidding requirements shall not apply to contracts not involving more than \$2,000 per year if the terms of such contract reflect arms' length negotiations. For the period of July 1, 1990 through June 30, 1991, nothing in this subsection shall prohibit a state employee, a state officer, or a private enterprise in which a state employee or a state officer has a legal or equitable ownership of more than 10% (more than 1% in the case of a corporation whose stock is regularly traded on an established securities market) from contracting with a public school district and/or the State Board of Education for the transportation of school children without public notice and competitive bidding as is permitted under § 6923 of this title.

(d) Post-employment restrictions.

No person who has served as a state employee, state officer or honorary state official shall represent or otherwise assist any private enterprise on any matter involving the State, for a period of 2 years after termination of employment or appointed status with the State, if the person gave an opinion, conducted an investigation or otherwise was directly and materially responsible for such matter in the course of official duties as a state employee, officer or official. Nor shall any former state employee, state officer or honorary state official disclose confidential information gained by reason of public position nor shall the person otherwise use such information for personal gain or benefit.

(e) Unauthorized disclosure of confidential information.

No person shall disclose any information required to be maintained confidential by the Commission under § 5806(d), § 5807(b) or (d), or § 5810(h) of this title.

(f) Criminal sanctions.

(1) Any person who knowingly or willfully violates any provision of this section shall be guilty of a misdemeanor, punishable for each such violation by imprisonment of not more than 1 year and by a fine not to exceed \$10,000.

(2) A prosecution for a violation of this section shall be subject to the time limitations of § 205 of Title 11.

(3) The Superior Court shall have exclusive jurisdiction over prosecution for all criminal violations of this section.

(g) Contracts voidable by court action.

In addition to any other penalty provided by law, any contract entered into by any state agency in violation of this subchapter shall be voidable by the state agency; provided, that in determining whether any court action should be taken to void such a contract pursuant to this

subsection, the state agency shall consider the interests of innocent 3rd parties who may be damaged thereby. Any court action to void any transaction must be initiated within 30 days after the state agency involved has, or should have, knowledge of such violation.

(h) Exceptions for transportation contracts with school districts.

Except for transportation supervisors for any school district within this State, nothing in this section shall prohibit an employee or the employee's spouse or children (natural or adopted) from contracting for the transportation of school children. Such transportation contracts may be entered into by an employee or the employee's spouse or children without public notice and competitive bidding as is provided in § 6916 of this title.

(i) [Deleted.]

(59 Del. Laws, c. 575, § 1; 63 Del. Laws, c. 1, § 1; 64 Del. Laws, c. 423, § 1; 67 Del. Laws, c. 314, § 1; 67 Del. Laws, c. 417, § 1; 68 Del. Laws, c. 198, § 1; 69 Del. Laws, c. 467, §§ 4, 27; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 150, § 86; 71 Del. Laws, c. 227, § 2.)

Annotations

Revisor's note. - Section 102 of 71 Del. Laws, c. 150, provides: "Insofar as the provisions of this act are inconsistent with the provisions of any general, special or local laws, or parts thereof, the provisions of this act shall be controlling."

§ 5806. Code of conduct.

(a) Each state employee, state officer and honorary state official shall endeavor to pursue a course of conduct which will not raise suspicion among the public that such state employee, state officer or honorary state official is engaging in acts which are in violation of the public trust and which will not reflect unfavorably upon the State and its government.

(b) No state employee, state officer or honorary state official shall have any interest in any private enterprise nor shall such state employee, state officer or honorary state official incur any obligation of any nature which is in substantial conflict with the proper performance of such duties in the public interest. No state employee, state officer or honorary state official shall accept other employment, any compensation, gift, payment of expenses or any other thing of monetary value under circumstances in which such acceptance may result in any of the following:

- (1) Impairment of independence of judgment in the exercise of official duties;
- (2) An undertaking to give preferential treatment to any person;
- (3) The making of a governmental decision outside official channels; or
- (4) Any adverse effect on the confidence of the public in the integrity of the government of the State.

Provided however, that a minimal gratuity provided on occasion to blind or disabled state employees or other blind or disabled persons supervised by the Division of Visually Impaired, shall not be considered to be a violation of this section.

(c) No state employee, state officer, or honorary state official shall acquire a financial interest in any private enterprise which such official has reason to believe may be directly involved in

decisions to be made by such official in an official capacity on behalf of the State.

(d) Any state employee or state officer who has a financial interest in any private enterprise which is subject to the regulatory jurisdiction of, or does business with, any state agency (and any honorary state official who has a financial interest in any private enterprise which is subject to the regulatory jurisdiction of, or does business with, the state agency on which the official serves as an appointee) shall file with the Commission a written statement fully disclosing the same. Such disclosure shall be confidential and the Commission shall not release such disclosed information, except as may be necessary for the enforcement of this chapter. The filing of such disclosure statement shall be a condition of commencing and continuing employment or appointed status with the State.

(e) No state employee, state officer or honorary state official shall use such public office to secure unwarranted privileges, private advancement or gain.

(f) No state employee, state officer or honorary state official shall engage in any activity beyond the scope of such public position which might reasonably be expected to require or induce such state employee, state officer or honorary state official to disclose confidential information acquired by such official by reason of such public position.

(g) No state employee, state officer or honorary state official shall, beyond the scope of such public position, disclose confidential information gained by reason of such public position nor shall such official otherwise use such information for personal gain or benefit.

(h) No state employee, state officer or honorary state official, in the course of public responsibilities, shall use the granting of sexual favors as a condition, either explicit or implicit, for an individual's favorable treatment by that person or a state agency.

(59 Del. Laws, c. 575, § 1; 63 Del. Laws, c. 1, § 2; 65 Del. Laws, c. 349, § 1; 67 Del. Laws, c. 417, § 1; 69 Del. Laws, c. 467, §§ 5, 27; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 567, § 1.)

§ 5807. Waivers of restrictions and advisory opinions.

(a) Notwithstanding the provisions of §§ 5805 and 5806 of this title, upon the written request of any state agency or of any individual who is or was a state employee, state officer or honorary state official, the Commission may grant a waiver to the specific prohibitions contained therein if the Commission determines that the literal application of such prohibition in a particular case is not necessary to achieve the public purposes of this chapter or would result in an undue hardship on any employee, officer, official or state agency. Any such waiver may be granted only by written decision of the Commission. Any person who acts in good faith reliance upon any such waiver decision shall not be subject to discipline or other sanction hereunder with respect to the matters covered by the waiver decision provided there was a full disclosure to the Commission of all material facts necessary for the waiver decision.

(b) Any application for a waiver, any proceedings and any decision with respect thereto shall be maintained confidential by the Commission provided that:

(1) Public disclosure shall be made by the Commission upon the written request of the applicant;

(2) The Commission may make such public disclosure as it determines is required in connection with the prosecution of any violation of this subchapter;

(3) The Commission shall report to appropriate federal and state authorities substantial evidence of any criminal violation which may come to its attention; and

(4) In the event that a waiver is granted, the waiver decision and the record of all proceedings relating thereto shall be open to public inspection.

(c) Upon the written request of any state employee, state officer, honorary state official or state agency or a public officer as defined in § 5812 of this title, the Commission may issue an advisory opinion as to the applicability of this chapter to any particular fact situation. Any person who acts in good faith reliance upon any such advisory opinion shall not be subject to discipline or other sanction hereunder with respect to the matters covered by the advisory opinion provided there was a full disclosure to the Commission of all material facts necessary for the advisory opinion.

(d) Any application for an advisory opinion, any proceedings and any decision with respect thereto shall be maintained confidential by the Commission provided that:

(1) Public disclosure shall be made by the Commission upon the written request of the applicant;

(2) The Commission may make such public disclosure as it determines is required in connection with the prosecution of any violation of this chapter;

(3) The Commission shall report to appropriate federal and state authorities substantial evidence of any criminal violation which may come to its attention; and

(4) The Commission shall prepare a summary of its advisory opinions for public distribution without disclosing the identity of the applicants.

(59 Del. Laws, c. 575, § 1; 67 Del. Laws, c. 417, § 1; 69 Del. Laws, c. 467, §§ 6, 7, 27.)

§ 5808. State Public Integrity Commission; establishment, membership, offices.

(a) The State Ethics Commission is hereby renamed and reestablished as the State Public Integrity Commission to assume the functions of the State Ethics Commission and to administer and implement this chapter, and to perform such other responsibilities as may be entrusted to it by law.

(b) The Commission shall consist of 7 members appointed by the Governor with the concurrence of the Senate. Not more than 4 members shall be registered with the same political party. No member shall hold any elected or appointed office under the government of the United States or the State or be a candidate for any such office. No member shall hold any political party office or an office in any political campaign. Members of the Commission may be removed by the Governor, with the concurrence of the Senate, for substantial neglect of duty, gross misconduct in office or violation of this chapter.

(c) A member of the Commission shall be appointed for a term of office of 7 years and until a successor has been appointed and has qualified, except that initially the Commission shall consist of the members of the former State Ethics Commission as of July 15, 1994, and said members shall serve the remaining portion of their terms and until their successors have been appointed and have qualified. No member shall serve for more than 1 full 7-year term. When a vacancy occurs in the membership of the Commission, it shall be filled by appointment for the unexpired portion of the term in the same manner as original appointments.

(d) The Commission shall elect a chairperson from among its membership. Four members of the Commission shall constitute a quorum and, if a quorum is present, a vacancy on the Commission shall not impair the right of the remaining members to exercise all the powers of the Commission. Disciplinary hearings may be conducted and sanctions may be imposed only by the affirmative action of at least 4 members. Otherwise the Commission may delegate

authority to the chairperson to act for the Commission between meetings.

(e) Each member of the Commission shall be compensated at the rate of \$100 for each day devoted to the performance of official duties. Each member of the Commission shall be reimbursed for reasonable and necessary expenses incurred in the performance of official duties.

(f) The principal office of the Commission shall be in Dover but it may meet, and exercise its power, at any other place in the State.

(67 Del. Laws, c. 417, § 1; 69 Del. Laws, c. 467, § 8; 70 Del. Laws, c. 186, § 1.)

§ 5808A. Commission Counsel; powers and duties.

(a) There shall be a Commission Counsel who shall be the legal representative of the Commission and have the following powers and duties:

(1) To assist the Commission in preparing and publishing manuals and guides explaining the duties of individuals covered by this chapter and in other activities, such as seminars and workshops, educating individuals covered by this chapter about its requirements and purposes, and giving instructions and public information materials to facilitate compliance with, and enforcement hereof.

(2) To provide legal counsel to the Commission concerning any matter arising in connection with the exercise of its official powers or duties.

(3) To review information coming to the attention of the Commission relating to potential violations of this chapter.

(4) To investigate information coming to the attention of the Commission that, if true, would constitute a violation of any provision of this chapter and/or to recommend that possible violations of these, or other state and federal laws, be referred by the Commission to the Attorney General or the United States Attorney for investigation and prosecution. Matters may be so referred to the Attorney General or the United States Attorney only upon a determination by at least a majority of the Commission that there are reasonable grounds to believe that a violation may have occurred.

(5) To prosecute disciplinary proceedings, if a determination has been made by at least a majority of the Commission that there are reasonable grounds to believe that a violation may have occurred, before the Commission and to assist the Commission in drafting educational materials, waiver decisions and advisory opinions.

(6) To employ and supervise staff necessary to perform investigatory and prosecutorial functions.

(7) To maintain permanent records of all advisory, waiver, investigatory and prosecutorial matters.

(8) To perform any other tasks requested by the Commission concerning any matter arising in connection with the exercise of its official powers or duties.

(b) The Commission Counsel may recuse from a matter before the Commission when, in the view of Commission Counsel or of the Commission, such recusal is deemed necessary or appropriate. In situations where Commission Counsel recuses, the duties of the Commission Counsel may be exercised by the Attorney General or by outside counsel chosen by the Commission.

(69 Del. Laws, c. 467, § 9; 70 Del. Laws, c. 186, § 1.)

§ 5808B. Commission Counsel's appointment contingent upon appropriations.

The Commission Counsel established by § 5808A of this title shall not be appointed by the Commission until adequate funds have been appropriated for such purpose. In the absence

of such appointment, the Attorney General shall provide legal assistance to the Commission and shall exercise any duties assigned to the Commission Counsel by this chapter. Such duties may also be exercised by outside counsel chosen by the Commission, if adequate funds are appropriated for such purpose.

(69 Del. Laws, c. 467, § 9.)

§ 5809. State Public Integrity Commission - Power and duties.

The powers and duties of the Commission shall be as follows:

(1) To recommend to the General Assembly from time to time such rules of conduct for public employees and officials as it shall deem appropriate.

(2) To issue written advisory opinions upon the request of any state employee, state officer, honorary state official or state agency as to the applicability of this chapter to any particular fact situation.

(3) To refer to Commission Counsel to investigate any alleged violation of this chapter and, after notice and hearing, to recommend by resolution, such disciplinary action as it may deem appropriate to such appropriate official or agency as the Commission shall determine or to take such other disciplinary action as is authorized by § 5810(d) of this title or other provisions of this Code. The Commission may also dismiss any complaint that it determines is frivolous or fails to state a violation.

(4) To report to the appropriate federal or state authorities any substantial evidence of a violation of any criminal law which may come to its attention in connection with any proceeding whether advisory or disciplinary.

(5) To maintain a file of its proceedings, waiver decisions and advisory opinions with a view toward achieving consistency of opinions and recommendations subject to the confidentiality requirements of § 5807(b) and (d), and § 5810(h).

(6) To follow the procedural rules specified in § 5810 of this title and to establish such other procedural rules as shall not be inconsistent with the rules prescribed therein.

(7) To subpoena witnesses, compel their attendance and testimony, administer oaths and affirmations, take evidence and require by subpoena the production of books, papers, records or other evidence needed for the performance of the Commission's duties or exercise of its powers.

(8) To prescribe forms for reports, statements, notices and other documents required by law.

(9) To prepare and publish manuals and guides explaining the duties of individuals covered by this chapter; and giving instructions and public information materials to facilitate compliance with, and enforcement hereof.

(10) To provide assistance to state agencies, employees and officials in administering the provisions of this law.

(11) To prepare an annual report by March 1st of each year describing its activities for the previous year and to prepare such other reports and studies as may advance the purposes of this chapter.

(12) To appoint a lawyer admitted to practice in the State to serve as Commission Counsel.

(13) To request appropriate state agencies to provide such professional assistance as it may require in the discharge of its duties.

(14) To contract for any services which cannot satisfactorily be performed by the Commission Counsel or other Commission staff.

(15) Commencing January 15, 1995, to administer and implement the financial disclosure provisions of subchapter II of this chapter and to maintain the records filed pursuant thereto.

(16) Commencing January 15, 1996, to administer and implement the lobbyist registration provisions of this Code and to maintain the records filed pursuant thereto.

(17) To perform such other responsibilities as may be assigned to it by law.

(59 Del. Laws, c. 575, § 1; 67 Del. Laws, c. 417, § 1; 69 Del. Laws, c. 467, §§ 10-13, 27.)

§ 5810. State Public Integrity Commission - Complaints; hearings; dispositions.

(a) Upon the sworn complaint of any person or on its own initiative, the Commission may refer to the Commission Counsel for investigation any alleged violations of this chapter. The Commission Counsel shall be the prosecuting attorney in disciplinary proceedings before the Commission. In any such investigation or proceeding, a defendant shall be given an opportunity to be heard after notice, to be advised and assisted by legal counsel, to produce witnesses and offer evidence, and to cross-examine witnesses. A transcript of any such proceeding shall be made and retained, subject to the confidentiality requirements of subsection (h) of this section.

(b) A member of the Commission shall be ineligible to participate, as a member of the Commission, in any commission proceeding relating to such member's conduct. A member of the Commission who has been found by the Commission to have violated this chapter shall be ineligible to serve again as a member of the Commission.

(c) A member of the Commission may disqualify himself or herself from participating in any investigation of the conduct of any person upon submission in writing and under oath of an affidavit of disqualification stating that the member cannot render an impartial and unbiased decision in the case in which the member seeks to disqualify himself or herself.

(d) With respect to any violation with which a person has been charged and which the Commission has determined as proved, the Commission may take any 1 or more of the following actions:

(1) Issue a written reprimand or censure of that person's conduct.

(2) With respect to a state employee or state officer, other than an elected official, remove, suspend, demote or take other appropriate disciplinary action with respect to that person, without regard to any limits imposed by Chapter 59 of this title but within the limits of the Constitution and other laws of the State.

(3) With respect to an honorary state official, recommend that appropriate action be taken to remove the official from office.

(e) In any proceeding before the Commission, upon the request of any person charged with a violation of this chapter, such person shall be permitted to inspect, copy or photograph books, papers, documents, photographs or other tangible objects which will be used as evidence against that person in a disciplinary hearing and which are material to the preparation of a defense.

(f) In any proceeding before the Commission, if the Commission Counsel or the Commission at any time receives any exculpatory information respecting an alleged violation against any person, it shall forthwith make such information available to such person.

(g) Any person charged with a violation of this chapter may apply to the Commission for the issuance of subpoenas for the appearance of witnesses and for the production of documents on the person's behalf. The application shall be granted upon a concise showing by such person that the proposed testimony or evidence is relevant (or is reasonably calculated to lead to the discovery of relevant evidence) and is not otherwise available. The application shall be denied if not made at a reasonable time or if the testimony or evidence would be merely cumulative.

(h) (1) All proceedings relating to a charged violation of this chapter shall be maintained confidential by the Commission unless (i) public disclosure is requested in writing by the person charged; or (ii) the Commission determines after a hearing that a violation has occurred.

(2) Notwithstanding the confidentiality requirements of paragraph (1) of this subsection, the Commission shall make available for public inspection the record of all proceedings relating to any decision of the Commission which is appealed to Superior Court and the Commission shall report to appropriate federal or state authorities any substantial evidence of a violation of any criminal law which comes to its attention in connection with any proceeding under this chapter.

(3) The chairperson of the Commission shall, with the approval of the Commission, establish such procedures as in the chairperson's judgment may be necessary to prevent the disclosure of any record of any proceedings or other information received by the Commission or its staff except as permitted by this chapter.

(67 Del. Laws, c. 417, § 1; 69 Del. Laws, c. 467, §§ 14-18; 70 Del. Laws, c. 186, § 1.)

§ 5810A. Judicial review.

In the event that the Commission finds that any person has violated any provision of this chapter, said person shall have a right of appeal to Superior Court of any such finding and of any sanctions imposed with respect thereto by filing a notice of appeal with the Superior Court within 30 days of the final action by the Commission in a particular case. The appeal shall be on the record without a trial de novo. If the Court determines that the record is insufficient for its review, it shall remand the case to the Commission for further proceedings on the record. The Court's review, in the absence of actual fraud, shall be limited to a determination of whether the Commission's decision was supported by substantial evidence on the record. The burden of proof in any such appeal shall be on the appellant.

(67 Del. Laws, c. 417, § 1; 69 Del. Laws, c. 467, § 19.)

Annotations

Revisor's note. - As originally enacted this subchapter contained § 5817 which provided: "If any provision of this chapter or the application of any provision of this chapter to any person or circumstances is held invalid, the application of such provision to other persons or circumstances and the remainder of this chapter shall not be affected thereby." This section has been omitted from codification.

Subchapter II. Financial Disclosure

§ 5811. Findings.

The General Assembly finds and declares that:

(1) In our democratic form of government, persons serving in state government hold positions of public trust which require rigorous adherence to the highest standards of honesty, integrity and impartiality.

(2) In order to insure propriety and preserve public trust, a public official or employee should refrain from acting in an official capacity on any matter wherein the employee or official has a direct or indirect personal financial interest that might reasonably be expected to impair objectivity or independence of judgment, and should avoid even the appearance of impropriety.

(3) A disclosure of the personal financial interests of public officials will serve to guard against conduct violative of this public trust and to restore the public's faith and confidence in representatives of its government.

(64 Del. Laws, c. 110, § 1; 70 Del. Laws, c. 186, § 1.)

§ 5812. Definitions.

(a) "Business enterprise" means corporation, partnership, sole proprietorship or any other individual or organization carrying on a business or profession.

(b) "Capital gain" means capital gains required to be reported to the Internal Revenue Service pursuant to federal internal revenue laws.

(c) "Commission" means the State Public Integrity Commission.

(d) "Constructively controlled" means:

(1) A financial interest in the name of another which is controlled by a public officer by virtue of any relationship of the public officer to another person and which directly benefits the public officer;

(2) Any financial interest of a public officer held jointly with the spouse or child of such public officer;

(3) Any financial interest of the spouse or minor child of a public officer.

(e) "Debt instrument" means bonds, notes, debentures, mortgages or other securities having a fixed yield if not convertible to equity instruments.

(f) "Equity instrument" means any ownership interest in a corporation or other legal entity giving rights to the holder upon liquidation of the entity.

(g) "Fair market value" means, if a security, the quoted price as of January 1 of the year in which the report required by § 5813 of this title is filed, or, if not a security, the price at which the public officer would sell as of January 1 of the year in which the report required by § 5813 of this title is filed.

(h) "Gift" means a payment, subscription, advance, forbearance, rendering or deposit of money, services or anything of value unless consideration of equal or greater value is received. "Gift" shall not include a political contribution otherwise reported as required by law, a commercially reasonable loan made in the ordinary course of business, or a gift received from a spouse or any relative within the 3rd degree of consanguinity of the person or person's spouse or from the spouse of any such relative.

(i) "Honoraria" means fees received for speeches, written articles and participation in discussion groups and similar activities, but does not include reimbursement for expenses.

(j) "Income for services rendered" means income from a single source and includes salary, wages, consulting fees and professional services.

(k) "Instrument of ownership" includes, but is not limited to, common or preferred stock, rights, warrants, articles of partnership, proprietary interest, deeds and debt instruments, if convertible to equity instruments.

(l) "Position of management" means officer, director, partner, proprietor or other managerial position in a business enterprise.

(m) "Professional organization" means an individual engaged in, or an association organized pursuant to, federal or state law for the practice of medicine, law, accounting, engineering or other profession.

(n) "Public officer" shall mean:

(1) Any person elected to any state office; and

(2) Any person appointed to fill a vacancy in an elective state office; and

(3) Any candidate who has filed for any state office; and

- (4) The Research Director and Controller General of the Legislative Council; and
- (5) The Chief Justice and Associate Justices of the Supreme Court; and
- (6) The Chancellors and Vice-Chancellors of the Court of Chancery; and
- (7) The President Judge and Associate Judges of Superior Court; and
- (8) The Chief Judge and Associate Judges of Family Court; and
- (9) The Chief Judge and Resident Judges of the Court of Common Pleas; and
- (10) The Chief Magistrate and justices of the peace; and
- (11) The State Court Administrator and the administrators of Superior Court, Family Court, the Court of Common Pleas, and the Justice of the Peace Courts; and
- (12) The Public Guardian, the Executive Secretary of the Violent Crimes Compensation Board, the Executive Director of the Child Placement Review Board; and
- (13) All Cabinet Secretaries and persons of equivalent rank within the Executive Branch; and
- (14) All division directors and persons of equivalent rank within the Executive Branch; and
- (15) The State Election Commissioner and the Administrative Directors and Assistant Administrative Directors of the Department of Elections; and
- (16) The State Fire Marshal and the Director of the State Fire School; and
- (17) The Adjutant General of the Delaware National Guard.

Elected and appointed officials of political subdivisions of the State, public school districts of the State and state institutions of higher learning shall not be deemed to be public officers within the meaning of this subchapter.

(o) "Reimbursement for expenditures" means any payments to a public officer for expenses incurred by that public officer.

(p) "Time or demand deposits" means checking and savings account in banks or deposits or share in savings and loan institutions, credit unions or money market funds.

(64 Del. Laws, c. 110, § 1; 64 Del. Laws, c. 223, § 1; 67 Del. Laws, c. 418, § 1; 69 Del. Laws, c. 467, § 20; 71 Del. Laws, c. 176, § 35; 72 Del. Laws, c. 190, § 4; 72 Del. Laws, c. 338, § 6.)

§ 5813. Report disclosing financial information.

(a) Every public officer as defined in § 5812 of this title shall file a report disclosing financial interests, as hereinafter provided. Each report shall be on a form prescribed by the Commission, shall be signed by the public officer, shall be notarized and shall include at least the following information:

- (1) The name and position of the public officer; and
- (2) The name, instrument and nature of ownership, and any position of management held by, or constructively controlled by, the public officer in any business enterprise in which legal or equitable ownership is in excess of \$5,000 fair market value or from which income of more than \$5,000 was either derived during the preceding calendar year or might reasonably be expected to be derived during the current calendar year. Time or demand deposits in a financial institution, or any debt instrument having a fixed yield shall not be listed unless convertible to an equity instrument; and
- (3) The name, address and type of practice, without reference to the identity of any individual clients served, of any professional organization in which the public officer is the sole practitioner, officer, director or partner, or serves in any advisory capacity, or which is

constructively controlled by the public officer, from which income of more than \$5,000 was either derived during the preceding year or might reasonably be expected to be derived during the current calendar year; provided, however, that any such organization construed as a business enterprise and reported pursuant to paragraph (2) of this subsection need not be reported under this subsection; and

(4) The source of each of the following items received during the preceding calendar year, or reasonably expected to be received during the current calendar year:

a. Any income derived for services rendered exceeding \$1,000 from a single source, unless such income is otherwise identified pursuant to paragraph (2) or (3) of this subsection; or

b. Any capital gain exceeding \$1,000 from a single source other than from the sale of a residence occupied by the public officer; or

c. Any reimbursement for expenditures exceeding \$1,000 from a single source; or

d. Any honoraria; or

e. Any gift with a value in excess of \$250 received from any person, identifying also in each case the amount of each such gift. For purposes of compliance with this gift reporting obligation, the recipient may rely in good faith upon the representation of the source of the gift as to the gift's value; and

(5) Each creditor to whom the public officer was indebted for a period of 90 consecutive days or more during the preceding calendar year in an aggregate amount in excess of \$1,000.

(b) Each report required by this section shall contain a sworn certification by the public officer that the officer has read the report, and that to the best of the officer's knowledge and belief it is true, correct and complete, and that the officer has not and will not transfer any assets, interests or property for the purpose of concealing it from disclosure while retaining an equitable interest therein.

(c) Not later than 14 days after becoming a public officer as defined in § 5812 of this title, the report required by this subchapter shall be filed. Thereafter, the report shall be filed on February 15 of each year.

(d) Each report required by this section shall be filed with the Commission.

(64 Del. Laws, c. 110, § 1; 67 Del. Laws, c. 418, § 2; 69 Del. Laws, c. 467, §§ 21-23; 70 Del. Laws, c. 186, § 1.)

§ 5814. Retention of reports.

(a) The Commission shall keep the reports required by this subchapter on file for so long as the person submitting such report is a public officer of this State, as defined in § 5812 of this title, and for at least 5 years thereafter. All reports on file with agencies other than the Commission as of January 15, 1995 shall be transferred to the Commission by April 15, 1995.

(b) The reports filed pursuant to this subchapter shall be made available at reasonable hours for public inspection and copying pursuant to Chapter 100 of this title.

(64 Del. Laws, c. 110, § 1; 69 Del. Laws, c. 467, § 24.)

§ 5815. Violations; penalties; jurisdiction of Superior Court.

(a) Any public officer who willfully fails to file a report in violation of § 5813 of this title shall be guilty of a class B misdemeanor.

(b) Any public officer who knowingly files any report required by § 5813 of this title that is false in any material respect shall be guilty of a class A misdemeanor.

(c) The Commission may refer to the Commission Counsel for investigation and/or may refer

any suspected violation of this subchapter to the Attorney General for investigation and prosecution; provided however, that the Commission shall refer any suspected violation of this subchapter by a member of the General Assembly or the Judiciary to the Attorney General, who shall have the exclusive authority to investigate and prosecute or otherwise recommend remedies or sanctions for such suspected violation.

(d) Superior Court shall have jurisdiction over all offenses under this subchapter. (64 Del. Laws, c. 110, § 1; 69 Del. Laws, c. 467, § 25.)

§ 5816. Protection of confidentiality.

Nothing contained in this subchapter shall be construed as requiring the disclosure of any fact the confidentiality of which is protected by any applicable federal or state law.

(64 Del. Laws, c. 110, § 1.)

Subchapter III. Compensation Policy

§ 5821. Findings.

(a) There are numerous elected state officials and other paid appointed officials who are also employed by state agencies, educational and other institutions, and other jurisdictions of government within the State.

(b) The members of the General Assembly believe that the taxpayers of Delaware should not pay an individual more than once for coincident hours of the workday.

(c) The State should have in place clear policies and procedures to ensure that taxpayers of the State as a whole, and of its various governmental jurisdictions, are not paying employees or officials from more than 1 tax-funded source for duties performed during coincident hours of the workday. (65 Del. Laws, c. 488, § 1.)

§ 5822. Policy.

(a) Any person employed by the State, or by any political subdivision of the State, including but not limited to any county, city or municipality, who also serves in an elected or paid appointed position in state government or in the government of any political subdivision of the State, including but not limited to any county, city or municipality, shall have his or her pay reduced on a prorated basis for any hours or days missed during the course of the employee's normal workday or during the course of the employee's normal workweek while serving in an elected or paid appointed position which requires the employee to miss any time which is normally required of other employees in the same or similar positions.

(b) Any day an employee misses work due to his or her elected or paid appointed position, he or she shall have his or her immediate supervisor verify a time record stating specifically the number of hours worked that day; said verification to take place at least once every pay period.

(c) All time records, so verified, shall be kept by the immediate supervisor until such time as they are required by the State Auditor.

(d) No employee shall be permitted to make up time during hours other than the normal workday for purposes of compensation. A normal workday is defined by Merit Rule 5.0200. A standard work schedule is defined by Merit Rule 5.0210.

(e) Any hours or days during which an employee uses vacation, personal, or compensatory days to which he or she is entitled shall not constitute hours or days which fall within the scope of this subchapter.

(f) School administrators whose duties require that they work regularly during summer months shall not be exempted from this chapter. If a school administrator shall have no immediate supervisor, the school administrator's time record shall be verified by the appropriate school board at its next regular or special meeting following any pay period in which said administrator missed work due to his or her elected or paid appointed position. (65 Del. Laws, c. 488, § 1; 70 Del. Laws, c. 186, § 1; 73 Del. Laws, c. 190, §§ 1, 2.)

Annotations

Effect of amendments. - 73 Del. Laws, c. 190, effective July 17, 2001, added the last two sentences in (d); and substituted "vacation, personal, or compensatory" for "vacation or personal" in (e).

§ 5823. Audits; penalty.

(a) The State Auditor shall conduct an annual audit of the time records which have been kept by the supervisors or school board in accordance with § 5822(b) and (c) of this title to determine whether or not an employee was paid from more than 1 tax-funded source for working coincident hours of the day.

(b) Any discrepancy found by the State Auditor shall be reported to the Public Integrity Commission for investigation pursuant to § 5810 of this title and/or to the Office of the Attorney General for possible prosecution under § 876 of Title 11 (tampering with public records in the first degree) and any other appropriate section.

(65 Del. Laws, c. 488, § 1; 69 Del. Laws, c. 467, § 26.)

Subchapter IV. Registration of Lobbyists § 5831. Definitions.

(a) As used in this subchapter, the following terms shall have the meanings indicated: (1) "Commission" means the State Public Integrity Commission.

(2) "Compensation" means any money, thing of value or any other economic benefit of any kind or nature whatsoever conferred on or received by any person in return for services rendered or to be rendered by such person or another.

(3) "Employer" means any person on whose behalf a lobbyist acts.

(4) "General Assembly" includes any member, committee or subcommittee of either House of the General Assembly.

(5) "Lobbyist" means any individual who acts to promote, advocate, influence or oppose any matter pending before the General Assembly by direct communication with the General Assembly or any matter pending before a state agency by direct communication with that state agency, and who in connection therewith either:

- a. Has received or is to receive compensation in whole or in part from any person; or
- b. Is authorized to act as a representative of any person who has as a substantial purpose the influencing of legislative or administrative action; or
- c. Expends any funds during the calendar year for the type of expenditures listed in § 5835(b) of this title.

(6) "Matter" means any application, petition, request, business dealing, transaction or decision of any sort.

(7) "Person" means any individual, partnership, corporation, trust, joint venture and any other association of individuals or entities.

(8) "State agency" means any office, department, board, commission, committee, school district, board of education and all public bodies existing by virtue of an act of the General

Assembly or of the Constitution of the State, excepting only political subdivisions of the State, their agencies and other public agencies not specifically included in this definition that exist by virtue of state law and whose jurisdiction:

a. Is limited to a political subdivision of the State or to a portion thereof; or b. Extends beyond the boundaries of the State.

(9) "State employee" means person who receives compensation as an employee of a state agency (including the elected or appointed heads of such agencies) or who serves as an appointed member, trustee, director or the like of any state agency.

(b) Subparagraphs a. and b. of subsection (a)(5) of this section shall not apply to:

(1) Persons performing professional services in drafting bills or regulations or in advising and rendering opinions to clients as to the construction or effect of proposed, pending or enacted legislation or regulations who do not otherwise act as lobbyists;

(2) Persons appearing pursuant to their official duties as employees or elected officials of the State, or any political subdivision thereof, or of the United States, and not as representatives of any other person; moreover, expenditures listed in § 5835 of this title made by such persons or their employers in connection with these official duties shall not qualify such persons as lobbyists under subsection (a)(5)c. of this section;

(3) Persons who, in relation to the duties or interests of their employment or at the request or suggestion of their employer, communicate with the General Assembly or a state agency concerning any legislation, regulation or other matter before the General Assembly or such state agency, if such communication is an isolated, exceptional or infrequent activity in relation to the usual duties of their employment;

(4) Persons communicating with the General Assembly or a state agency if such communication is undertaken by them as a personal expression and not as an agent of their employers as to matters of interest to a person by whom or by which they are employed and if they receive no additional compensation or reward, in money or otherwise, for or as a result of such communication;

(5) Persons testifying at public hearings conducted by the General Assembly or a state agency who do not otherwise act as lobbyists;

(6) Persons appearing on behalf of any religious organization with respect to subjects of legislation or regulation that directly relate to the religious beliefs and practices of that organization who do not otherwise act as lobbyists;

(7) Attorneys representing clients in administrative adjudications governed by the provisions of subchapter III of Chapter 101 of this title, representing clients before the Tax Appeals Board, or in other administrative procedures where ex parte communications with the state agency with authority over the matter are prohibited;

(8) Attorneys representing clients with regard to criminal or civil law enforcement proceedings, or in any judicial proceedings.

(69 Del. Laws, c. 467, § 28; 70 Del. Laws, c. 186, § 1.)

§ 5832. Registration of lobbyists with the State Public Integrity Commission.

(a) Every lobbyist shall register with the Commission in a lobbyist docket and file, at that time, the authorization from the lobbyist's employer as required by § 5833 of this title. A person who qualifies as a lobbyist in accordance with § 5831(a)(5)a. or b. of this title shall register prior to performing any acts as a lobbyist. A person who qualifies as a lobbyist in accordance with § 5831(a)(5)c. of this title must register within 5 days after so qualifying, if

not already registered as a lobbyist.

(b) The information recorded in the Commission's lobbyist docket shall include for each separate employer:

- (1) The name, residence or business address and occupation of each lobbyist;
- (2) The name and business address of the employer of such lobbyist;
- (3) The date on which the employment as lobbyist commenced;
- (4) The length of time the employment is to continue; and
- (5) The subject matter of legislation, regulation or administrative action as to which the employment relates at that time.

(c) Upon any change in the information recorded in the lobbyist docket, the lobbyist shall within 10 business days report such changes to the Commission, which shall record the change in the docket.

(d) The Commission shall promptly furnish copies of each entry in the lobbyist docket to the Chief Clerk of the House of Representatives, the Secretary of the Senate, the Governor and the head of any state agency upon request of such persons.

(69 Del. Laws, c. 467, § 28; 70 Del. Laws, c. 186, § 1.)

§ 5833. Employer's authorization to act.

Every employer of a lobbyist shall furnish to such lobbyist a written and signed authorization to act, which shall be filed with the Commission by the lobbyist at the time of registration or as soon as available and not later than 15 business days after the lobbyist has registered with the Commission. If the employer is a corporation, association or labor union, any authorized officer or agent who is not the lobbyist shall furnish and sign the written authorization. The authorization shall include the full and legal name and business address of both the employer and the lobbyist, the period of time during which the lobbyist is authorized to act and the subject or subjects of legislation, regulation or administrative action upon which the employer is represented.

(69 Del. Laws, c. 467, § 28.)

§ 5834. Compensation of lobbyist not to be substantially dependent on outcome of legislative or administrative action.

No person shall employ a lobbyist nor shall any person be employed as a lobbyist pursuant to any compensation agreement that permits more than half of the compensation to be paid to such a lobbyist to be dependent upon the outcome of any legislative or administrative action.

(69 Del. Laws, c. 467, § 28.)

§ 5835. Reports by lobbyists.

(a) On or before the 20th day of the month following each calendar quarter, each lobbyist shall file a written report covering the immediately preceding calendar quarter and containing the information required by this subchapter.

(b) A lobbyist shall file separate reports for each employer which the lobbyist represents. Each report shall contain the total expenditures during the reporting period for all direct expenditures, costs or values, whichever is greater, provided for members of the General Assembly or for employees or members of any state agency for the following:

- (1) Food and refreshment;**
- (2) Entertainment, including the cost of maintaining a hospitality room;**
- (3) Lodging expenses away from home;**
- (4) Fair value of travel if the trip exceeds 100 miles;**
- (5) Recreation expenses; and**
- (6) Gifts or contributions, excluding political contributions as defined in Chapter 80 of Title 15 provided to members of the General Assembly.**

(c) The information shall be reported on a form which shall be available from the Commission and shall show the total expenditures for the reporting period and shall also list the recipient any time the expenditures exceed \$50 per diem. The lobbyist shall also affirm that the lobbyist has provided the recipient of any gift in excess of \$50 with a representation as to the value of the gift. The records shall be retained for a period of 4 years from the date of filing.

(69 Del. Laws, c. 467, § 28; 70 Del. Laws, c. 186, § 1.)

§ 5836. When registration, report or authorization is considered as filed; access to records.

(a) Any registration, report or authorization form shall be considered filed as of the date it is physically filed with the Commission or is mailed if sent by registered or certified mail.

(b) The lobbyist docket maintained by the Commission and any reports, authorizations or other documents filed with the Commission pursuant to this subchapter shall be made available at reasonable hours for public inspection and copying pursuant to Chapter 100 of this title.

(69 Del. Laws, c. 467, § 28.)

§ 5837. Violation and penalties.

(a) Any person who knowingly fails to register as a lobbyist as required by this subchapter shall be guilty of a misdemeanor.

(b) Any person who knowingly furnishes false information in any registration, authorization or report required by this subchapter shall be guilty of a misdemeanor.

(c) Any person who fails to file an authorization or report as required by this subchapter shall be deemed to have voluntarily cancelled registration as a lobbyist and shall be prohibited from reregistering or acting as a lobbyist until all delinquent authorizations and/or reports have been filed.

(d) The Commission may refer to the Commission Counsel for investigation and/or refer any suspected violation of this subchapter to the Attorney General for investigation and prosecution. The Speaker of the House, the presiding officer of the Senate, the Legislative Council or any member of the General Assembly shall refer, or any other person may refer, any suspected violation of this subchapter to the Commission and/or the Attorney General of the State.

(e) The Superior Court shall have exclusive jurisdiction over all offenses under this subchapter.

(69 Del. Laws, c. 467, § 28; 70 Del. Laws, c. 186, § 1.)